(क) अ— 477/98

(2)

XII-189 (Jail) C J.P.R./9-94

CF0000060297

APPEAL OF PRISONER

No दण्डित बन्दी नम्बर- Name सुकरान सिंह (क)

Father's name रमईसिंह जाति-गोंड ग्राम-रसकमा थाना-पाली

Residence जिला-बिलासपुर (मध्य प्र) Age 35 वर्ष

Sentenced to धारा 302 भा.द.सं on 29-1-98

Under Section आजीवन-कारावास by न्यायालय अपर न्यायाधीश

द्वि.एवं सत्र प.पदेन श्री विनोद देशमुख मं.प्र. बिलासपुर

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received _____

3 Date on which Appeal sent ~~29-1-98~~ 5-2-98

4 Whether the prisoner wishes to be represented or not. ~~नहीं~~

No दण्डित बन्दी नं- Name सुकरान सिंह पि० रमईसिंह

Confined in _____ Jail ~~बिलासपुर~~ (मध्य प्र)

No. _____ Dated 29-1-98 199 _____

Forwarded to the रजिस्ट्रार महोदय उच्च न्यायालय जबलपुर (मध्य प्र)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

अधीक्षक
Superintendent
जिला जेल, बिलासपुर म.प्र.

_____ Jail _____

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the

Date of receipt in Appellate court _____

(P. T. O.)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. No. 477/98 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: HON'BLE SHRI L.C. BHADOO AND HON'BLE SHRI DHIRENDRA MISHRA, JJ

Criminal Appeal No. 477/1998

Appellant : Sudarshan Singh

Versus

Respondent : State of Madhya Pradesh (now Chhattisgarh

Shri Abhay Tiwari, Advocate for the appellant.

Shri U.K.S. Chandel, Panel Lawyer for the State.

ORAL JUDGMENT
(19-12-2006)

Per L.C. Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 29-1-1998 passed by learned Sessions Judge, Bilaspur in Sessions Trial No. 141/1997 whereby learned Sessions Judge after holding the accused guilty for commission of offence under Section 302 of I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo R.I. for two years.

2. Case of the prosecution is that Ramhu Singh P.W. 3 father of the accused lodged report Ex. P-1 in Police Station Pali to the effect that after taking dinner all

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr-A. No. 477/98

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

family members went for sleep. At about 12.00 in midnight his youngest son Bhuwan Singh P.W. 1 came and informed that his elder brother Sudarshan Singh after closing doors of his room from inside is beating his wife Dhankunwar on which he asked his sons to go to Sudarshan Singh's room. They asked Sudarshan Singh to open the door, on which Sudarshan demanded a Bidi. When he opened the doors to take Bidi, he was caught and the axe was snatched from him. In the light of lamp, they saw that the wife of the accused namely Dhankunwar was lying dead in a pool of blood. Receiving this report, Station House Officer, Police Station Pali registered an offence under Section 302 of I.P.C., left for the scene of occurrence, after giving notice to Panchas vide Ex. P-2, prepared inquest under Ex. P-3. Dead body of Dhankunwar was sent for post mortem examination to Community Health Centre, Pali under Ex. P-7-A where Dr. Prakash Bhalerao conducted post mortem on the body of Dhankunwar and prepared post mortem report Ex. P-7-B. He noticed as many as 13 incised wounds on head, face and neck region and opined that cause of death was coma as a result of head injury. Site plan Ex. P-8-A was prepared by the Investigating Officer. After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Katghora who in turn committed the case to the Sessions Judge, Bilaspur where prosecution examined 10 witnesses in order to establish the charge against the accused. Statement of the accused was recorded

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr. A. No. 477/98 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

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under Section 313 of Cr.P.C. in which he stated that as he saw one Prem Singh indulged in intercourse with his wife, therefore he attacked Prem Singh with an axe which hit Dhankunwar by mistake and he never wanted to commit murder of Dhankunwar. Learned Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as aforementioned.

3. We have heard Shri Abhay Tiwari, learned counsel on behalf of the accused-appellant and Shri U.K.S. Chandel, learned Panel Lawyer on behalf of the State-respondent.

4. Shri Tiwari has not disputed homicidal death of Dhankunwar. Apart from that, from the evidence P.W. 1 Bhuwan Singh and P.W. 2 Ram Bai who immediately went to the room where the accused was attacking the deceased with axe and also from medical evidence of P.W. 8 Dr. Prakash Bhalerao who conducted post mortem on the body of Dhankunwar, it is established that death of Dhankunwar was homicidal in nature.

5. So far as involvement of the accused in crime in question is concerned, P.W. 1 Bhuwan Singh, youngest brother of accused has stated that the accused is his elder brother and name of his wife was Dhanaiya Bai. They are 4 brothers and he is youngest amongst them. They have their parents. All the 4 brothers and mother and

P.T.O.

4
23

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

Cr. A. No. 477/98

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

father reside in their houses separately but all the houses are adjoining. On the day of Chherchhera festival they were sleeping in their houses, at about 12.00 in midnight his brother Kalyan woke them up and disclosed that Sudarshan Singh is beating his wife, on which he along with his mother Rambai went to the house of accused Sudarshan Singh. Door of the house was closed from inside. They requested Sudarshan to open the door on which he opened the door, they saw in the light of a lamp that Dhanaiya Bai was lying dead in the room of Sudarshan in a pool of blood and there were injuries on her head. The accused was holding axe in his hand and he was trying to run away, therefore, he caught hold of him and took him to his father, thereafter he was tied with the help of rope and in the morning, his father informed Kotwar and reported the matter in Police Station Pali. Similar is the evidence of mother of the accused P.W. 2 Rambai and father of the accused P.W. 3 Ramhu Singh. Perusal of their evidence establishes that in the fateful night, the accused was in his room with his wife and at about 12.00 in the night, brother of the accused namely Kalyan who was not keeping good health on account of mental problem heard noise of beating and informed his mother and father. When Bhuwan Singh and Rambai went to the room of Sudarshan which was bolted from inside, they asked him to open the door and on their request, when Sudarshan Singh opened the door, they saw in the light of lamp that Dhanaiya Bai was lying dead in a pool of blood.

P.T.O.

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 477/98 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

There were injuries on her head, and axe of the accused was snatched by Bhuwan Singh, he was tied with the help of rope, thereafter the matter was reported to Police Station Pali. They are closely related to the accused and residing in adjacent houses to the house of accused. Even the accused in his statement under Section 313 of Cr.P.C. has admitted that Dhankunwar Bai died on account of injuries inflicted by him but his defence is that he saw Dhankunwar in a compromising position with one Prem Singh, therefore, he lifted an axe to attack said Prem Singh but the axe hit his wife, therefore, by mistake, Dhankunwar sustained injuries. The suggestion made by counsel for the accused to the witnesses of the prosecution that Dhankunwar Bai was having illicit relation with one Prem Singh has not been found favour with these witnesses and they have stated that they do not have such knowledge, therefore defence of the accused that he saw his wife in a compromising position with Prem Singh does not appear to be plausible. When accused himself was in the same room then how it was possible for a third person to come to his room and have intercourse with his wife, as such the defence raised by the accused is not plausible and it has been conclusively proved by evidence of P.W. 1 Bhuwan, P.W. 2 Rambai and P.W. 3 Ramhu Singh that the accused committed murder of his wife. From medical evidence of P.W. 8 Dr. Prakash Bhalerao, it is established that the accused attacked the deceased with axe and inflicted as many as 13 injuries on vital part of the body,

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

as a result of which, frontal right half, right parieto-temporal and occipital region were fractured at various places, therefore, the accused had beaten Dhankunwar Bai mercilessly. Looking to the injuries inflicted by the accused, defence raised by the accused is itself belied because when he inflicted first injury and came to know that by accident he has inflicted injury on his wife then why he repeatedly assaulted his wife for 13 time, itself shows that the defence raised by the accused was false.

6. Counsel for the appellant argued that the accused is a poor person having no means of earning his livelihood and fine of Rs. 5,000/- has been imposed on him apart from life imprisonment which is not possible for the accused to deposit.

7. Looking to the argument raised by the learned counsel for the appellant and not disputed by the State Counsel, we are of the considered opinion that if fine is reduced to Rs. 100/- that will meet the ends of justice.

8. In the result, conviction and the substantive sentence imposed upon the appellant is upheld and instead of fine of Rs. 5,000/-, a fine of Rs. 100/- is imposed upon the accused and in default of payment of fine, he shall undergo R.I. for one month.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.